

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Co.Appeal.35/2006 & CM Nos.10481/06 & 3243/08

% Date of decision: 28.04.2008

KULBIR SINGH ... APPELLANT
Through: Appellant in person.

Versus

OFFICIAL LIQUIDATOR ATTACHED TO
THE HIGH COURT OF DELHI (OBSERVER) ... RESPONDENT
*Through: Mr. S.K. Luthra, Advocate for the
OL in Co.App.No.35/2006.*

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

CM 10481/2006

Allowed, subject to just exceptions.

Co. Appeal No.35/2006

1. A petition for winding up of M/s National Chemical Industries Pvt. Ltd. (hereinafter referred to as the said company) was filed before this Court and a winding up order was passed on 19.2.1981. The scheme propounded u/s 391 of the Companies Act, 1956 (hereinafter referred to as the said

Act) was sanctioned by the Company Judge on 1.3.1983 to facilitate revival of the said company. It is stated that the order sanctioning the scheme provided for no alienation of immovable properties and the Official Liquidator was made as the observer to supervise and report on the progress of revival and implementation of the scheme. The consequence of this order was stated to be the stay of the winding up order.

2. It is the case of the appellant that the company was actually never revived in pursuance to the scheme and the Official Liquidator failed to report the non-revival.
3. The appellant and his mother were the shareholders of the said company and in terms of an arrangement arrived at the shares were sought to be transferred. The appellant and his mother were objecting to the scheme and it is in those circumstances that the orders are stated to have been passed on 24.9.1984.
4. The appellant filed C.A.827/1998 for action to protect the properties at Najafgarh and Faridabad. This was stated to be required as the Official Liquidator was not reporting on the matter. On enquiry, the Official Liquidator reported to have stated that there was no such company in existence at the given address. Notices were, therefore, issued to the Directors. Thus, there is stated to have a failure of the revival scheme.

5. C.A.827/1998 filed by the appellant was dismissed by the impugned order dated 10.3.2006 and the present appeal is directed against the said order.
6. A perusal of the impugned order shows that the learned Company Judge has taken note of the statement made in Court on 28.11.1983 by the appellant and his mother whereby they agreed to sell their shares in the said company to one Mr.R.C. Goenka for Rs.8.00 lacs along with interest @16 P.A. from the date of the statement till the date of payment. They also further stated that in view of the settlement, the scheme would remain in operation and that the said company was entitled to sell two plots of total area of two acres at Najafgarh Road. The amount of Rs.8.00 lacs was deposited in the Court and was paid to the appellant and his mother. However, out of the said amount, a sum of Rs.1.00 lac was retained for some time in view of the Estate Duty liability.
7. Insofar as the appellant is concerned, the order dated 26.7.1996 passed by the learned Company Judge is stated to have recorded that the only dispute qua him which survived was whether he was entitled to a multiplier / interest on Rs.50,000/- for a period of 11 years or 6 years. On this aspect a decision was rendered against the appellant vide orders dated 12.11.2002 whereby it was held

that the appellant was entitled to interest of Rs.54,666/- only as calculated by the Registry of this Court.

8. The impugned order takes note of the allegations made by the appellant against the Official Liquidator who was appointed as an observer. It is, thus, alleged that the Official Liquidator failed to perform his duties and act in accordance with the provisions of law in respect of the scheme propounded including for sale of properties. The learned Company Judge found that the allegations were vague in respect of sale of immovable properties without permission. It has also been taken note that though vide the order dated 1.3.1983 the propounders as well as the collaborators of the scheme were enjoined from alienating any of the properties of the said company, the said order was subsequently modified on 24.11.1983 whereby plot Nos.25 and 26, Najafgarh Road, Delhi were permitted to be sold. Not only that, the order dated 30.4.1984 vacated all interim stays.
9. On hearing the appellant in person, we find no merit in the appeal. The appellant and his mother objected to the scheme. The scheme was permitted to be proceeded with only on the claim of the appellant being satisfied. Such satisfaction arose on account of receipt of consideration agreed to be paid for sale of the shares for Rs.8.00 lacs. Thus, the right and interest of the appellant and his mother

arising from the holding of shares stood extinguished in terms of the arrangement arrived at on 28.11.1983 and the consideration deposited in pursuance thereto and paid thereafter except the amount detained towards the Estate Duty liability. The appellant and his mother had specifically agreed that the scheme would remain in operation.

10. As to whether the scheme has been properly implemented or not and what is the consequence thereof would be for the learned Company Judge to consider. However, the appellant has no role to play in the same and the only entitlement of the appellant left was about the claim of some interest on an unpaid amount of Rs.50,000/- detained for Estate Duty clearance in respect of shares inherited by the said two persons. The appellant is now claiming to raise stale issues to put impediments possibly arising from the appreciation of the real estate value of the plots which were agreed to be sold.

11. There is no infirmity in the impugned order. Dismissed.

CM No.3243/2008

Application has become infructuous and is disposed of.

SANJAY KISHAN KAUL, J.

April 28, 2008
'sp'

MOOL CHAND GARG, J.